

ORDINANCE NO. 2005-21

AN ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF

WHEREAS, environmental tobacco smoke is a leading public health problem in the City of Gardendale, Alabama, and throughout the United States; and,

WHEREAS, the use of lighted smoking products inherently creates a health hazard of secondhand smoke, which affects the public health, indoor environment, and the enjoyment of public places; and,

WHEREAS, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, and allergies and irritations to the eyes, ears, nose, and throat of both smokers and non-smokers; and,

WHEREAS, environmental tobacco smoke, which includes both exhaled and sidestream smoke from burning cigarettes, causes the deaths of many thousands of Americans each year; and,

WHEREAS, the harmful effects of environmental tobacco smoke are not confined to smokers but also cause discomfort and illness to many non-smokers; and,

WHEREAS, food and beverage establishments have been shown to be locations of significant exposure to environmental tobacco smoke by the citizens of the City of Gardendale; and,

WHEREAS, both the Public Health Services National Toxicology Program and the World Health Organization's International Agency for Research on Cancer identify environmental tobacco smoke as a human Class A carcinogen and state that there is no safe level of exposure; and,

WHEREAS, the United States Surgeon General, the American Cancer Society, the American Lung Association, and the Alabama Department of Public Health have concluded that involuntary smoking is a cause of disease, including lung cancer, in non-smokers.

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Gardendale, Alabama, while in regular session on the 7th day of November, 2005, at 6:00 p.m., that the Council recognizes the dangers of exposure to secondhand and sidestream tobacco smoke and establishes this regulation to protect and improve the public health and welfare.

SECTION 1. DEFINITIONS.

As used in this Ordinance, the following words and terms shall have the meanings respectively ascribed.

Bar means an establishment that is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the establishment's gross annual

receipts. This definition includes but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.

City means the City of Gardendale, Alabama.

Common area means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.

Employee means any person who is employed by an employer for compensation or profit.

Employer means any person, partnership, corporation, association, or other entity that employs one (1) or more persons.

Public or *public place* shall mean any enclosed area that is available to and customarily used by the general public or that is a public meeting area or that is an outdoor public gathering area, and includes areas as described in Section 2.

Restaurant means an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Smoking or *smoke* shall include the carrying, holding, or possession of lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes, or other tobacco products.

Workplace means any indoor area under the control of an employer to which employees have access during the course of employment, including but not limited to work areas, employee lounges, employee restrooms, conference rooms, and employee cafeterias. A private residence is not a place of employment.

SECTION 2. OFFENSES.

Any owner of a building or the owner's duly authorized agent may designate said building to be smoke-free such that no smoking is permitted in any enclosed area of the premises.

Except as provided in Sections 3 and 4 of this Ordinance No. 2005-21, smoking is prohibited in any of the following public places within the City of Gardendale:

1. Any enclosed areas of buildings or facilities that are available to and customarily used by the general public, including but not limited to retail stores, restaurants, banks, office buildings, convention or meeting facilities, hotels, motels, and multi-family residential buildings;
2. Any vehicle of public transportation, including but not limited to trains, buses, taxicabs (while transporting a fare) and limousines;
3. Elevators;
4. Common areas located in but not limited to commercial and non-commercial multi-tenant buildings, apartment buildings, or other multi-family residences sharing common areas;
5. All real property associated with libraries, schools, or other education facilities, museums, auditoriums, and art galleries;

6. Any health care facility, health clinic, or ambulatory care facility, including but not limited to laboratories associated with the rendering of health care treatment, hospitals, rest homes, doctors' offices, and dentists' offices;
7. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, recreation halls, bowling alleys, arenas, and swimming pools;
8. All areas of municipally owned parks or public use lands where the general public congregates, including but not limited to bleacher areas, pavilions, concession areas, playgrounds, outdoor cooking areas, gazebos, tennis courts, pools, playing fields, skate parks, and track areas;
9. Vehicles and motorized equipment owned by the City of Gardendale.

SECTION 3. EXCEPTIONS.

Section 2 and the restrictions imposed therein shall not apply to:

1. Areas which are specifically designated as smoking areas in accordance with Section 4 of this Ordinance No. 2005-21;
2. An entire room or hall that is used for private social functions, provided that the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall, excluding City-owned facilities;
3. Bars, but not to include restaurant bars unless such establishment satisfies the conditions in Section 4 of this Ordinance No. 2005-21;
4. Limousines under private hire by an individual or corporation;
5. A single-tenant commercial office building, provided that both the landlord and tenant agree to allow smoking;
6. A private, enclosed office(s) together with its private reception area(s) within a commercial office building housing more than one business and/or organization, provided that:
 - a. The landlord of the commercial office building specifically permits smoking in designated areas of the building, not including common areas, which must remain smoke-free; and,
 - b. The office(s) together with reception area(s) are located within an enclosed area of the commercial office building with a separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking areas. Any such smoking area must be physically separated in its entirety by walls that extend from floor to the ceiling above, and have doors that can be closed.
7. Performers upon the stage, provided that the smoking is part of a theatrical production;
8. A tobacco specialty retail shop;

9. Hotel and motel rooms which are rented to guests and designated as smoking rooms by the management and separated from non-smoking rooms by a solid wall with no inner-connected doorways. Smoking and non-smoking rooms may be separated by floors, but every effort should be made to place smoking floors above non-smoking floor levels;
10. Private social clubs and veterans' organizations, provided a majority of the board of directors approve to allow smoking and such majority approval is noted in the official minutes of the club or veterans' organization and posted in a prominent interior location;
11. Parking lots and parking decks;
12. Private residences, except when used as a licensed childcare, adult care, or health care facility.

SECTION 4. DESIGNATION OF SMOKING AREAS.

The owner, lessee, or other person in charge of a public place may, but is not required to, designate one (1) or more areas as smoking areas as detailed in this Section 4.

1. If a smoking area is designated, each smoking area shall be located:
 - a. In an unenclosed area of the premises (out of doors) and a minimum of thirty (30) feet away from any general public entrance to or exit from the building; or,
 - b. Within an enclosed area (indoors) with a separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking area. Any such smoking area must be physically separated in its entirety by walls which extend from floor to the ceiling above, and have doors which can be closed.
2. In the case of restaurants, smoking is permitted in an indoor restaurant bar under the following conditions:
 - a. The restaurant bar area is physically separated in its entirety by walls which extend from floor to ceiling above, except for the sharing of a common ingress/egress between the smoking and non-smoking area;
 - b. The restaurant bar area utilizes a separate HVAC system which services only that area, or, utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking area. Such system(s) must be in operation during all hours when food or beverages are served. The air handling system serving the restaurant bar area must be wired in series with the air handling fan control of the restaurant dining area.

- c. An initial airflow Test and Balance certificate substantiating compliance shall be provided to the City of Gardendale on or before January 1, 2006, by any establishment operating a restaurant bar with an enclosed (indoor) smoking area. Test and Balance certifications issued within twelve (12) months of the effective date of this Ordinance No. 2005-21 may be accepted in lieu of a new certification, provided there have been no changes to the air handling system or interior structure; thereafter, airflow test and balance certificates shall be required when changes are made to the air handling system or interior structure, or in the event of non-compliance with this Section 4 of Ordinance No. 2005-21. During any non-compliant period, the restaurant, together with its bar, will remain smoke-free pending the presentation of a new airflow test and balance certificate to the City of Gardendale.
3. All such smoking areas must be designated by appropriate signs as provided in Section 5 of this Ordinance No. 2005-21 which are clearly visible to patrons in or entering the area; and
4. All such smoking areas must contain ashtrays, containers, or other facilities for the extinguishment of smoking materials.

SECTION 5. RESPONSIBILITY OF PROPRIETORS.

The proprietor or other person having control of any area within Section 2 of this Ordinance No. 2005-21 shall:

1. Post prominently displayed "SMOKING" or "NO SMOKING" signs, whichever may be appropriate, or the international "NO SMOKING" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it.
2. Post conspicuously displayed signs in the lobby of every theater stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theatres such information shall be shown upon the screen prior to the showing of each feature motion picture;
3. Instruct persons smoking in violation of this article to cease said smoking or to leave the non-smoking area to a designated smoking area.

SECTION 6. REGULATION OF SMOKING IN THE WORKPLACE.

Any business may, at the employer's discretion, be designated a non-smoking workplace.

Other than the exceptions listed in Section 3, if a business chooses to accommodate smoking employees it must provide a smoking area as defined in Section 4 of this Ordinance No. 2005-21. An employer is not required by this provision to incur any expense for making structural or other physical modification to accommodate the preferences of non-smoking or smoking employees.

SECTION 7. ENFORCEMENT.

The provisions of this chapter are enforceable by any duly sworn police officer, any appropriate representative of the Fire Department employed by the City of Gardendale, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

SECTION 8. FINES AND PUNISHMENT.

Any person who willfully smokes in an area where smoking is prohibited under this Ordinance No. 2005-21; or, any business proprietor or person in charge of a public place who fails or refuses to designate smoking and non-smoking areas as required herein or who refuses to enforce the designations, shall be in violation of this Ordinance.

It shall be unlawful to violate any of the terms and provisions of this Ordinance. Any person, firm, or corporation violating any of the said terms and provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than twenty five dollars (\$25.00) nor more than the maximum penalty allowed by the State of Alabama for a misdemeanor violation for each such "offense." Each day any violation of this Ordinance shall continue shall constitute a separate offense.

SECTION 9. SUMMONS AND COMPLAINT

Pursuant to Section 11-45-9.1 of the Code of Alabama, 1975, as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances:

1. Any law enforcement officer or appropriate representative of the Fire Department employed by the City of Gardendale may issue a Summons and Complaint to any person charged with violation of this Ordinance No. 2005-21 and release such person from custody upon his or her written promise to appear in court at the designated time and place as evidenced by his or her signature on the Summons and Complaint;
2. The form of the approved Summons and Complaint shall be the Uniform Non-Traffic Citation and Complaint form, State of Alabama Unified Judicial System ARJA-20, 07/1994, or its successors.
3. Any party charged with a first offense in violation of this Ordinance No. 2005-21 may elect to appear before the Gardendale Municipal Court magistrate within the time specified in the Summons and Complaint, and upon entering a plea of guilty and executing a Notice of Waiver of Rights form may pay a minimum fine of Twenty Five Dollars (\$25.00), and court costs shall be waived for such first offense.

SECTION 10. MISCELLANEOUS.

Nothing in this chapter excuses non-compliance with any Federal or State law, other City of Gardendale ordinances, or any rule or regulation that prohibits smoking.

If any portion of this Ordinance shall be held unconstitutional, invalid, or unenforceable, such holding shall not affect the remaining portions of this chapter nor render the remaining portions of this chapter invalid, and to that end the provisions hereof are declared to be severable.

SECTION 11. EFFECTIVE DATE.

This ordinance shall become effective on the 1st day of January, 2006.

ADOPTED AND APPROVED on this the 7th day of November, 2005.

APPROVED: _____

Kenneth A. Clemons, Mayor

ATTEST: _____

Keith A. Mosley, City Clerk

CERTIFICATION

I, Keith A. Mosley, City Clerk of the City of Gardendale, Alabama, do hereby certify that the above is a true and correct copy of an Ordinance adopted by the City Council of the City of Gardendale, Alabama, while in regular session on the 7th day of November, 2005, and published in its entirety in the *North Jefferson News* on November 17, 2005.

Keith A. Mosley, City Clerk